IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-402

JOHN H. MEIER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ROBERT H. WYSHAK
LILLIAN W. WYSHAK
9255 Sunset Blvd.,#1125
Los Angeles, Ca.90069
213-273-2044
Attorneys for Petitioner

Of counsel:
WYSHAK & WYSHAK

SUBJECT INDEX

TABLE OF AUTHORITIES

RULES

INDEX TO APPENDICES

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No._____

JOHN H. MEIER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner hereby petitions this Court for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

PROCEEDINGS BELOW

The Judgment of the District Court is unreported. A copy is attached hereto as Appendix A.

The Memorandum of the Court of Appeals is unreported. A copy is attached hereto as Appendix B. It was filed May 3, 1978 and the Order Denying a Petition for Rehearing and Hearing in Banc was filed June 23, 1978.

JURISDICTION

Jurisdiction of this Court rests on 28 USC section 1254(1).

QUESTIONS PRESENTED

I

Whether the 9th Circuit's dismissal of the appeal is in conflict with decisions in other Circuits, which consider the propriety of bail bond forfeitures under circumstances in which the defendant is a fugitive.

II

Whether a judgment of forfeiture of bail is a civil proceeding, as the 9th Circuit held in *US v. Plechner*, ___F.2d___(9th Cir.6/28/78, #77-2484).

III

Whether a motion for judgment of forfeiture of bail constitutes a motion for summary judgment which should meet the requirements of Fed. R. Civ.P. 56(e) and a motion supported by hearsay affidavits and unauthenticated exhibits fails to meet such requirements.

IV

Whether a motion for judgment of forfeiture of bail requiring a defendant, already indicted for bail jumping, to incriminate himself and waive his Constitutional privileges to set aside the forfeiture of a $100,000 cash bond, constitutes an impermissible transgression of the Fifth Amendment.

V

Whether this Court should resolve the conflict in the Circuits as to whether a Federal bail bond contract should be governed by Federal common law or the law of the State in which the contract is executed.

VI

Whether the Judgment of Forfeiture in the case below for which no bail was ever posted and which resulted in the taking of $100,000 posted in connection with an earlier indictment(which has never been set for trial), constitutes an unconstitutional taking in violation of the Due Process clause and the clause prohibiting impairment of the bond contract executed in connection with the earlier case.

VII

Whether the long-standing practice of this Court to decline to review convictions of escaped criminal defendants is inapplicable to appellate attack on a civil judgment of bail forfeiture, particularly when the petitioner has never been convicted, never escaped, and continues to openly reside in Canada with his family as he has since 1972, over a year prior to any indictment.

STATEMENT OF THE CASE

This civil appeal from a judgment of default on an appearance bond finds its genesis in an indictment returned in Las Vegas, Nev. on 1/14/74, involving income tax charges against Meier and others, #LV 74-10. Although a summons was issued, it was never personally served on Meier. No order regarding conditions of release or bail was served on Meier. The docket reflects that an order was made that "summons be issued and the terms in Criminal-LV 2750 be continued as to defendant MEIER," but this order was never brought to the attention of Meier or his counsel until after the Record on Appeal was prepared and delivered to his counsel.

LV 2750 was an earlier indictment returned 8/9/73, for which a $100,000 cash bond had been posted. The contract, submitted to Meier by the U.S. Magistrate, by its terms applies to Crim. LV 2750 and no other case. LV 2750 has never been set for trial. A copy of that bond is attached as Appendix C.

LV 74-10 was set for trial in Reno, Nev. on 12/2/74. As permitted by an order of the District Court, Meier had been travelling in England in November, 1974. Based on the advice of a physician not to fly or risk permanent deafness, he failed to return to Reno and failed to appear when the case was called for trial. The District Judge forfeited the $100,000 bail(which had been posted in connection with LV 2750), and ordered the issuance of an arrest warrant with $500,000 bail. The Court insisted that it would not set the forfeiture aside until Meier appeared in person and met his burden of proving that the forfeiture should be set aside.

On Feb. 6,1975 Meier was indicted for bail jumping. On Apr.10,1975 the U.S. moved for entry of judgment of forfeiture, which it supplemented over four months later with affidavits by the Asst. U.S.Attorney based on newspaper clippings, other hearsay statements, and unauthenticated exhibits. On Sep.8,1975 the District Court filed its Judgment upon Default of Appearance Bond, directing the Clerk to apply the $100,000 cash bail deposit in satisfaction of the Judgment.

Meier's timely appeal to the Ninth Circuit was dismissed "because he is a fugitive," and without consideration of the merits of his claim for violation of his Constitutional rights.

REASONS FOR GRANTING WRIT

I

THE 9th CIRCUIT'S DISMISSAL OF THE APPEAL IS IN CONFLICT WITH DECISIONS IN OTHER CIRCUITS, WHICH CONSIDER THE PROPRIETY OF BAIL BOND FORFEITURES UNDER CIRCUMSTANCES IN WHICH THE DEFENDANT IS A FUGITIVE.

In support of its conclusion that the appeal should be dismissed the 9th Circuit cited only *US v. Villegas-Codallos*, 543 F.2d 1124(9th Cir. 1976). The dismissal in that case is bottomed on *Molinaro v. N.J.*, 396 U.S. 365. This Court's opinion in that case has never been previously cited to preclude access to the courts for what is basically a civil cause of action by a person convicted of nothing. *Molinaro* concerns a defendant who has been convicted of a crime, attempts to prosecute an appeal from the conviction, and then flees or escapes.

On the other hand, numerous cases consider the propriety of a bail bond forfeiture under circumstances in which the defendant is a fugitive, e.g. *U.S. v. Catino*, 562 F.2d 1(2d Cir. 1977); *U.S. v. Miller*, 539 F.2d 445(5th Cir. 1976); *U.S. v. D'Anna*, 487 F.2d 899(6th Cir. 1973); *U.S. v. Wray*, 389 F. Supp.1186(W.D.Mo. 1975). Yet, the 9th Circuit holds otherwise, as it did here.

This conflict should be resolved by the Court to allow for the fair and uniform administration of justice regarding bail.

II

A JUDGMENT OF FORFEITURE OF BAIL IS A CIVIL PROCEEDING.

Although the 9th Circuit recently ruled that a bail forfeiture is a civil proceeding in determining the timeliness of an appeal, *U.S. v. Plechner, supra*, it is important for this Court to resolve this question as the Solicitor General feels that it is an open question. It is important not only for the determination of the timeliness of a notice of appeal and the timeliness of a petition for writ of certiorari, but also from a procedural point of view in determining the sufficiency of the showing by the United States in its moving papers.

III

A MOTION FOR JUDGMENT OF FORFEITURE CONSTITUTES A MOTION FOR SUMMARY JUDGMENT WHICH SHOULD MEET THE REQUIREMENTS OF FED. R. CIV. P. 56(e) and A MOTION SUPPORTED BY HEARSAY AFFIDAVITS AND UNAUTHENTICATED EXHIBITS FAILS TO MEET SUCH REQUIREMENTS.

Although Fed. R. Crim.P. 46(e)(3) allows for a motion for entry of default when a forfeiture has not been set aside, no case delineates the criteria for the Government's burden. The sanction of a forfeiture is patently civil and the proceedings incident thereto are civil and should be governed by Fed. R. Civ.P.56(e), as for a summary judgment. *U.S. v. Plechner, supra; U.S. v. Barger,* 458 F.2d 396(9th Cir.1972). In the instant case, the Motion for Entry of Judgment was filed 4/10/75 without points or authorities or supporting affidavits. In view of the fact that Meier had already been indicted for bail jumping, he timely filed an opposition based primarily on his Constitutional privileges. Over 4 months after the U.S. filed its motion, it supplemented it with Affidavits and Miscellaneous Documents consisting of newspaper articles, copies of teletypes, and letters from strangers, none of which meets the requirements of Ruel 56(e), as interpreted in *U.S. v. Dibble,* 429 F.2d 598,602(9th Cir. 1970) and *Automatic Radio Mfg. Co. v. Hazeltine Research,* 339 U.S. 827,831.

Thus, there was no legally sufficient evidence within the meaning of Rule 56(e) to support the findings of fact in support of the judgment of forfeiture.

IV

A MOTION FOR JUDGMENT OF FORFEITURE OF BAIL, AFTER AN INDICTMENT FOR BAIL JUMPING, CONSTITUTES AN IMPERMISSIBLE TRANSGRESSION OF THE 5th AMENDMENT, SINCE THE FORFEITURE CAN BE SET ASIDE ONLY BY THE DEFENDANT'S WAIVING HIS CONSTITUTIONAL PRIVILEGES TO MEET THE BURDEN IMPOSED ON HIM BY THE DISTRICT COURT.

The record is clear that the District Court improperly attempted on more than one occasion to shift the burden to Meier to compel him to waive his Constitutional privileges in order to set aside the forfeiture. This is the very procedure condemned by this Court in *U.S. v. US Coins & Currency,* 401 U.S. 715,717. That case involved the forfeiture of monies found in the possession of a man who was arrested for failing to register as a gambler and pay the gambling tax. Because the money was found to have been used in violation of the Internal Revenue laws, the U.S. sought to forfeit it under 26 USC sec. 7302. In reliance on *Marchetti-Grosso,* 390 U.S.39,62, the Court expanded the self-incrimination privilege to a civil forfeiture action based on a transgression of the same criminal statutes.

Since this Court has held that the 5th Amendment privilege could be asserted in the forfeiture proceedings in *US Coins & Currency,* 401 US at 722, it necessarily follows that Meier could properly assert his privilege below and not suffer a forfeiture.

V

THIS COURT SHOULD RESOLVE THE CONFLICT IN THE CIRCUITS AS TO WHETHER A FEDERAL BAIL BOND CONTRACT SHOULD BE GOVERNED BY FEDERAL COMMON LAW OR THE LAW OF THE STATE IN WHICH THE CONTRACT IS EXECUTED.

The circuits are divided on whether state or Federal common law should determine the effect of the contract evidenced by the bond. The recent cases are collected in *U.S. v. Miller, supra,* and *U.S. v. Catino, supra.* Although these cases support the well-reasoned view that Federal common law is the criterion, the 9th Circuit has held in *U.S. v. Gonware,* 415 F.2d 82(9th Cir.1969) that Federal bail bond contracts must be interpreted in accordance with the law of the state in which they are made. The bond contract executed in connection with the LV 2750 indictment, which has never been set for trial and is still extant, was entered into in the State of Washington.

The record is clear that at no time did Meier agree to extend his guarantee of appearance in LV 2750 to any other case. Yet, the 9th Circuit appears to hold in its Memorandum filed 5/3/78, App. B, that the bail contract in connection with LV 2750 for some reason applies to his failure to appear for trial in another case, #LV 74-10. This was pointed out to the Court of Appeals in the Petition for Rehearing which was denied 6/23/78.

VI

SINCE THE DISTRICT COURT'S JUDGMENT RESULTED IN THE APPROPRIATION OF THE BAIL POSTED IN CONNECTION WITH AN EARLIER INDICTMENT, IT WAS AN UNCONSTITUTIONAL TAKING UNDER THE DUE PROCESS CLAUSE AND THE CLAUSE PROHIBITING IMPAIRMENT OF THE BOND CONTRACT EXECUTED BY MEIER ONLY IN CONNECTION WITH THE EARLIER CASE.

Meier failed to appear for the trial of LV 74-10, an indictment for which he had posted no bail and for which he had never been requested to post any bail. The District Court forfeited $100,000 bail that had been posted for an earlier outstanding indictment. The bail contract for the earlier indictment, LV 2750, refers to charges only "in connection with the above case," LV 2750. There is no evidence in the record to support any contention that the bond applied to the case set for trial, LV 74-10, and the Government has never so contended. Yet, the Court of Appeals in stating that bail was "posted in a criminal case pending against him in the District of Nevada"(Memorandum, App.B) implies that the case set for trial was the case in which the bail was posted. This is contrary to the record and not based on any such contention by the Government.

It is too clear for citation of authority that the District Court's judgment constituted a confiscatory taking in violation of the Due Process and Impairment of Contract clauses.

VII

THE LONG-STANDING PRACTICE OF THIS COURT TO DECLINE TO REVIEW CONVICTIONS OF ESCAPED CRIMINAL DEFENDANTS IS INAPPLICABLE TO AN APPELLATE ATTACK ON A CIVIL JUDGMENT OF BAIL FORFEITURE. THIS COURT MUST RESOLVE THE CONFLICT IN THE CIRCUITS AS TO WHETHER A COURT SHOULD ENTERTAIN SUCH AN APPEAL WHERE THE APPELLANT IS CHARACTERIZED AS A FUGITIVE.

Although the 9th Circuit has long characterized bail forfeitures as civil in character, only recently did it rule that a judgment forfeiting bail is a civil proceeding,

U.S. v. Plechner, supra. However, in the instant matter, it ruled that Meier should be denied judicial review of his claim that he had posted no bail for the proceeding for which he had failed to appear and that the taking and forfeiture of the bail posted in connection with the earlier proceeding was unconstitutional and contrary to the terms of the federal bail bond contract. The only authority cited by the 9th Circuit was *U.S. v. Villegas-Codallos, supra,* 543 F.2d 1124, which in turn relied on *Molinaro v. N.J., supra,* 396 US 365.

It is submitted that the 9th Circuit's limitations are incorrect, in conflict with the decisions in other circuits, and also outside the scope of this Court's ruling in *Molinaro.* In *Molinaro,* this Court dismissed the appeal of an escaped criminal defendant, stating that no persuasive reason existed to adjudicate the merits of his appeal and that an escape "disentitles the defendant to call upon the resources of the Court for determination of his claims." 396 U.S. at 366. According to the dissenting opinion in *Estelle v. Dorrough,* 420 U.S. 534,543, the *Molinaro* case and the opinions cited therein "have universally been understood to mean only that a court may properly dismiss an appeal of a fugitive convict *when, and because,* he is not within the custody and control of the court." (italics original). The dissenting opinion of Justice Stewart, Brennan & Marshall points out that the majority opinion rules for the first time that "a court may dismiss the appeal of an escaped criminal defendant at a time when he had been returned to custody, and thus to the court's power and control." *Ibid.* The issue there concerned a Texas statute depriving a convicted defendant of his right to appeal if he did not surrender within 10 days of his escape, and it sustained the validity of that statute.

There is no Supreme Court case involving a bail bond forfeiture and the right of a defendant to contest such a forfeiture, when he is characterized as a fugitive before trial and before any conviction. Meier is not an escaped convict. He has never been convicted of anything. He did not flee from the United States. He had moved to Canada with his family over a year before he was first indicted, and has continued to live there as permitted by the original restraints imposed by the District Court. Cf. *U.S. v. Campos-Serrano,* 404 U.S. 293,294, fn.2.

Not only are the Courts of Appeals in conflict as to the ambit of the *Molinaro* case, but this Court appears to have properly entertained a 4th Amendment claim on behalf of a corporation, which was admittedly the *alter ego* of a fugitive taxpayer. In *G.M.Leasing Corp. v. U.S.,* this Court considered civil claims for damages in violations of a taxpayer's Constitutional rights and the *alter ego* of the fugitive taxpayer prevailed. 429 U.S. 336,361. Similarly, Meier should be afforded his day in this Court, and the Court should take this opportunity to resolve the conflict in the Circuits.

In *U.S. v. Catino, supra,* 562 F.2d 1(2d Cir.); *U.S. v. Miller, supra,* 539 F.2d 445 (5th Cir.); *U.S. v. D'Anna, supra,* 487 F.2d 899(6th Cir.); *U.S. v. Wray, supra,* 389 F. Supp. 1186(W.D.Mo.), the courts considered the propriety of bail bond forfeitures under circumstances in which the defendant was a fugitive. In fact, the 9th Circuit properly refused to dismiss Meier's appeal on the basis of *Molinaro* in *Meier v. Keller,* 521 F.2d 548, 552(9th Cir.1975), a case involving pre-indictment proceedings to suppress on Constitutional grounds.

Although the factual pattern is the same as to Meier, the 9th Circuit now refuses to entertain his Constitutional claim despite its decisions of long-standing cited in *Plechner* as to the civil aspects of bail bond forfeitures.

Other cases have afforded a fugitive a forum. Although the 2nd Circuit found that Meissner was a fugitive living in the Bahamas or Costa Rica, *U.S. v. First National City Bank*, 568 F.2d 853,854,fn.3(2d Cir.1977) it ruled on his attempt to intervene in a civil IRS' proceeding to enforce IRS' levies on his safe deposit boxes. In *U.S. v. Saltzmann*, 548 F.2d 395(2d Cir.1976), the Court permitted a fugitive draft evader to move to dismiss an indictment for failure to comply with the Speedy Trial Act. The concurring opinion questioned whether the defendant was a fugitive, although living in a foreign country. "His residence is known,he has made no attempt to hide it, and he has been in communication first with the local draft board, and then with the United States Attorney." 548 F.2d at 403. By this definition of a fugitive, Meier has been improperly characterized as a fugitive, as he fulfills each of those parameters,(except as to the draft board which is here inapplicable).

CONCLUSION

The scope and ambit of *Molinaro* has resulted in inconsistent decisions not only in the various circuits but within the 9th Circuit. To avoid not only a gross miscarriage of justice resulting from the unconstitutional, confiscatory seizure of $100,000, but to delineate the parameters and create guidelines for the procedural aspects of bail forfeitures, this Court should grant the writ of certiorari. Federal regulation of bail procedures is pervasive. The interests of uniformity and certainty as to the interpretation of bond contracts and the federal fiscal interests in effecting forfeitures compel grant of the writ.

Sep.7,1978

Respectfully submitted,

Robert H. Wyshak
Lillian W. Wyshak

Of counsel:
WYSHAK & WYSHAK

Filed
Sep.8,'75

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

United States of America, Plaintiff, vs. John H. Meier, Defendant } Criminal LV 74-10

JUDGMENT UPON DEFAULT OF APPEARANCE BOND

The defendant, John H. Meier, having been duly notified to appear in open Court at the United States Courthouse, Reno, Nevada on December 2, 1974 for trial of the above entitled cause, did not appear on that date as required by the Court; whereupon, pursuant to Fed. R. Crim.P.46(e)(1) the Court entered an order declaring forfeiture of the cash bail provided by said defendant. Thereafter, the plaintiff served and filed a motion for judgment of default and gave defendant notice thereof pursuant to Fed. R. Crim. P.46(e)(3). Upon the relevant portions of the record, the Court directed and has approved the entry of Findings of Fact specifying the details of defendant's initial and subsequent non appearances in violations of orders of this Court, which by this reference are made a part hereof. To the present date defendant has not presented any credible explanation or reasonable justification for his repeated violation of orders of the Court in the particulars stated in the written Findings of Fact entered herewith. Now therefore, the Motion of plaintiff United States of America is granted and

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiff, United States of America, shall have and recover from the defendant,JOHN H. MEIER, judgment in the sum of $100,000.00; and the Clerk of this Court is hereby directed to apply defendant's $100,000.00 cash bail deposit in full satisfaction of this judgment pursuant to Rule 46 of the Federal Rules of Criminal Procedure.

DATED this 5th day of September,1975

s/ Geo.H. Boldt
George H. Boldt
SR.United States District Judge
WD.WASH., Sitting by Designation

APPENDIX A

Filed May 3, 1978

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. JOHN H. MEIER, Defendant-Appellant.	No. 75-3402 MEMORANDUM

Appeal from the United States District Court
for the District of Nevada
Before: Tuttle,* Duniway and Wright
Circuit Judges

Meier appeals from an order and judgment forfeiting his $100,000 cash bail, which was posted in a criminal case pending against him in the District of Nevada. He has twice failed to appear on successive dates set for the commencement of his trial. The record indicates that the first time he was in England and the second time he was in Canada. He has never appeared since that time. Because he is a fugitive, this appeal must be dismissed. United States v. Villegas-Codallos, 9 Cir., 1976, 543 F.2d 1124.

Appeal dismissed.

* The Honorable Elbert Parr Tuttle, Senior United States Circuit Judge for the Fifth Circuit, sitting by designation.

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff
v.
JOHN H. MEIER Defendant

Magistrate Docket 425-73 Case
Court Docket CR-LV-2750
ORDER FOR APPEARANCE, and
BOND FOR APPEARANCE OR RECOGNIZANCE

U.S. DISTRICT COURT DISTRICT OF NEVADA FILED
AUG 10 1973
JOHN A. PORTER, Clerk
BY [signature] DEPUTY

Defendant is specifically ordered to appear as follows:

(1) Before U. S. Magistrate, City of _____, _____, 19____, at _____ m.

(2) Before U. S. District Court, City of LAS VEGAS, District of NEVADA, on AUG. 24, 1973, at 1:30 p.m.

Until and unless a further Court date is set, Defendant is required to report to the Clerk of Court for sign-in at 9:00 a.m. on the second Friday of each succeeding month. and to Miss Dottie Woods, National Credit

SO ORDERED: [signature]
U. S. MAGISTRATE OR DEPUTY CLERK

* *

The undersigned jointly and severally acknowledge that we are bound to the United States of America in the sum of $100,000, and that $100,000 must be deposited with U. S. Magistrate or Clerk of Court before defendant may be released on this bond. Upon voiding of this bond, the deposit is returnable to: JOHN H. MEIER for return to whom he posted it.

CONDITIONS OF BOND

(1) Defendant is to appear before U.S. Magistrate and U.S. District Court for Western District of Washington and any other District, whenever and wherever ordered, in connection with the above case.

(2) Defendant is to report any change of address within 24 hours, to the clerk, U. S. District Court, U. S. Courthouse, Seattle, Wash. 98104 in writing.

(3) Defendant is to comply with every other condition of release set by a judicial officer.

(4) Defendant is not to travel outside bound aries of United States, except that defendant may travel to his home in Vancouver B.C. or within a 150 mi radius thereof.

If Defendant complies with CONDITIONS set forth, this bond will be void.

If Defendant fails to perform any of CONDITIONS set forth, the bond will be forfeited and due forthwith. If the bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in U. S. DISTRICT COURT against each debtor jointly and severally for the full amount of this bond, together with interest and costs, and execution may issue or payment be secured as provided by law.

DEFENDANT IS ADVISED THAT FAILURE TO APPEAR AS ORDERED AFTER RELEASE ON THIS BOND IS ALSO A CRIME. THE MAXIMUM PENALTY FOR FAILURE TO APPEAR MAY INCLUDE UP TO FIVE YEARS IN PRISON AND A FINE. AS DEFENDANT, I PROMISE TO APPEAR AS ORDERED AND COMPLY WITH ALL CONDITIONS OF RELEASE.

Defendant: [signature] JOHN H. MEIER Telephone 604-943-2934

Address: 360 ENGLISH BLUFF ROAD. City & State DELTA, B.C.

Surety: _____ Telephone _____

Address: _____ City & State _____

SWORN to before me this 13 day of Aug 1973 at Seattle.

FILED IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON
AUG 13 1973
EDGAR SCOGGINS, Clerk
By _____ Deputy

[signature] U. S. Magistrate or Deputy Clerk

JUSTIFICATION OF SURETIES

I, the undersigned surety, whose true name and address are set forth above, on oath state that my net worth within the State of Washington exceeds $_____.

_____ Signature

SWORN to before me this _____ day of _____ 19___.

Appendix C

No. 78-402

In the Supreme Court of the United States

OCTOBER TERM, 1978

JOHN H. MEIER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-402

JOHN H. MEIER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner challenges the district court's order and judgment forfeiting his $100,000 cash bail.

The pertinent facts are as follows: On August 13, 1973, petitioner was indicted in the United States District Court for the District of Nevada for attempted tax evasion, in violation of 26 U.S.C. 7201, and was released on a $100,000 cash bond (I-R. 1).[1] The conditions of the bond included, *inter alia,* that petitioner would personally appear as the court might order and that he would not travel outside the United States except within a 130-mile

---

[1] "R." refers to the three-volume duplicated record on appeal.

radius from his home in Vancouver, British Columbia, Canada.[2] On January 14, 1974, a superseding indictment was filed (I-R. 2-11). The terms of release in the first indictment were ordered to apply as well to the superseding indictment (I-R. 162-163). Thereafter, on March 18, 1974, at the request and for the convenience of petitioner, he was arraigned on Counts I and II of the superseding indictment in the United States District Court for the Western District of Washington at Tacoma, Washington (I-R. 12).

On July 31, 1974, prior to the scheduled hearing on his motions filed with respect to the superseding indictment, petitioner filed a "Waiver of Defendant's Presence" pursuant to which he " 'agreed to be present in person in Court ready for trial any day and hour which the Court may fix in his absence' " (I-R. 163). Thereafter, petitioner twice failed to appear on successive dates set for the trial of the case (Pet. App. B). On the first of these two occasions (December 2, 1974), petitioner's counsel advised the district court that petitioner was in London and was too sick to travel. The court ordered petitioner's bail forfeited and directed petitioner's counsel to arrange to have petitioner examined in London by a physician selected by the government (II-R. 5-34). The case was then continued for two days. On December 4, the court was advised that arrangements had been made for a physician from the American Embassy in London to examine petitioner, but that petitioner had not made the necessary arrangements for the examination (III-R. 5-9). The district court found that petitioner had violated the order of October 2, 1973, modifying the previously imposed travel restrictions (III-R. 12-16). After noting

[2]Subsequently, on October 2, 1973, the travel limitations were modified to permit petitioner to travel to London, England, for a limited period of time.

that petitioner had allegedly been ill for two months without advising the court of the illness until three days before trial, the court ordered petitioner to present himself immediately to the American Embassy in London for a medical examination (III-R. 15-17). The district court further ordered that the forfeiture of bond was to remain in effect (III-R. 18-19). Finally, the court rescheduled the trial for January 6, 1975, and petitioner was ordered to appear before the district court on January 3, 1975 (111-R. 19-20).

Petitioner never appeared at the American Embassy. Instead, on either December 5 or 6, 1974, he returned to his home in Vancouver, British Columbia (I-R. 166). On January 3, 1975, petitioner again failed to appear before the district court. At that time, petitioner's counsel was unable to give an explanation or excuse for petitioner's absence (I-R. 166). Petitioner also failed to appear for a hearing in a related case in the United States District Court for the Central District of California on January 27, 1975. See *Meier* v. *Keller*, 521 F. 2d 548, 552 (9th Cir. 1975), cert. denied, 424 U.S. 943 (1976). On February 6, 1975, petitioner was indicted in the United States District Court for the District of Nevada for failure to appear in accordance with the bond, in violation of 18 U.S.C. 3150 (I-R. 93).

On April 10, 1975, the government moved for entry of judgment on the previously declared bail forfeiture (I-R. 90). On September 5, 1975, after having given both parties the opportunity to file responsive pleadings, the district court entered judgment on the forfeiture (I-R. 172-173). The court of appeals dismissed petitioner's appeal, observing that petitioner twice failed to appear for trial and "has never appeared since that time" (Pet. App. B).

The court of appeals correctly dismissed petitioner's appeal. As this Court held in *Molinaro* v. *New Jersey*, 396 U.S. 365 (1970), an individual who seeks to invoke the processes of the law while flouting them has no entitlement "to call upon the resources of the Court for determination of his claims." (*id.* at 366). See also *United States* v. *Villegas-Codallos*, 543 F. 2d 1124, 1125 (9th Cir. 1976). Since petitioner remains a fugitive from justice, he likewise has no right to review by this Court.[3]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

OCTOBER 1978

---

[3]Petitioner relies (Pet. 5) upon several decisions in which the courts considered the propriety of a bail bond forfeiture where the defendant was a fugitive. *United States* v. *Catino*, 562 F. 2d 1 (2d Cir. 1977); *United States* v. *Miller*, 539 F. 2d 445 (5th Cir. 1976); *United States* v. *D'Anna*, 487 F. 2d 899 (6th Cir. 1973); *United States* v. *Wray*, 389 F. Supp. 1186 (W.D. Mo. 1975). But those cases are distinguishable because they involved appeals by the third-party sureties on the bail bonds and not by the fugitive himself.

G.M. Leasing Corp. v. *United States*, 429 U.S. 338 (1977), upon which petitioner also relies (Pet. 11), is similarly distinguishable. There, the Court held that the warrantless entry by Internal Revenue agents into the office of a corporation violated the Fourth Amendment. While the corporation was the alter ego of an individual who was a fugitive from justice, that fact simply subjected the corporation's assets to collection in satisfaction of outstanding tax assessments against the individual. Unlike this case, the fugitive did not seek to invoke the processes of this Court.